

What happens to my student loan debt in a chapter 13?

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It depends. Student loan debt is not dischargeable in bankruptcy, generally, in chapter 7 or chapter 13. So, as opposed to other unsecured debt, like credit card debt, it will still be owed at the end of the chapter 13 plan. This makes student loan debt quite unique and a topic of ongoing concern in bankruptcy circles, especially now when student loan debt is such a prevalent problem in today's society. But there may be some hope (read on).

Here are the mechanics. Student loan creditors, like other creditors, will need to file a claim in the chapter 13 to get paid. When they do, they will be entitled to the *pro rata* share any unsecured creditor is to receive from the chapter 13 trustee from the chapter 13 payments. Since a student loan usually requires a certain monthly payment, sometimes this means that the student loan will not receive enough to maintain the payments. Although certain collection activity is prohibited during the chapter 13, this can still lead to late fee and other charges as well and a not-so-good balance when the chapter 13 ends.

This has led bankruptcy attorneys to try and create a solution to this problem within the law, and legal creativity, if you will, has been employed with some success. The challenge is whether student loan debt can be separately classified. You see, bankruptcy separates debts/claims into classes. Student loans would normally be classified as a regular unsecured debt and treated as described above. The only difference usually is that it will not be dischargeable. Most bankruptcy judges have decided that that is not enough to separately classify student loan debt so it receives more than the other unsecured creditors during the chapter 13. But a minority has. The legal question involves the interplay between § 1322(b)(1), which does not allow for classification to "discriminate unfairly" against any class and § 1322(b)(5), which allows for the curing and maintenance of claims that the last payment due on is after the last payment of the proposed chapter 13 plan. Whether it is possible for you depends on the prevailing interpretation in your district.

However, there are some situations that have been deemed to be different enough to allow student loans to be separately classified and therefore receive regular payments (or some other treatment) during the plan. In one case, a bankruptcy court decided that not allowing the debtor to make the regular payments would result in the debtor owing more in student loans at the end of the case than at the beginning. *In re Webb*, 370 B.R. 418 (Bankr. N.D. Ga. 2007). One case in Massachusetts also employed similar reasoning in part. *In re Machado*, 378 B.R. 14 (Bankr. D. Mass. 2007). In another case, the debtor's optometry license, and thus ability to work in that profession, required debtor to be current his student loan. *In re Kalfayan*, 415 B.R. 907 (Bankr. S.D. Fla. 2009). The court also noted that the unsecured creditors would benefit from the debtor keeping the license as well. In another case, separate classification was permitted when it enabled the debtor to participate in the Public Service Loan Forgiveness Program and eliminate a significant amount of student loan debt through that program. *In re Pracht*, 464 B.R. 486 (Bankr. M.D. Ga. 2012).

In the event that you are considering filing a chapter 13 and have student loan debt we invite you to consider our office for representation and give us a call.

Contact: George E. Bourguignon, Jr., Esq.

Phone: (508) 769-1359 or (413) 746-8008

Email: gbourguignon@bourguignonlaw.com

Website: <http://www.bourguignonlaw.com>